

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of	)	
Paxson Des Moines License, Inc.	)	MM Docket No. 03-15
KFPX(TV), Newton, IA	)	
	)	File No. BFRECT-20050210AUC
Negotiated Channel Arrangement for	)	
First Round Digital Channel Election	)	
	)	
To: The Secretary		
Attn: Chief, Media Bureau		

**MOTION TO DISMISS RESPONSE OR, IN THE ALTERNATIVE,  
FOR LEAVE TO ACCEPT REPLY TO RESPONSE**

Paxson Des Moines License, Inc. ("Paxson"), licensee of television station KFPX(TV), Newton, Iowa, respectfully requests that the Commission dismiss the late-filed Response of Caroline K. Powley ("Powley"), filed March 28, 2005 in connection with the above-referenced channel election application. In the alternative, Paxson requests that if the Commission accepts that Response, that Paxson's instant Reply to Response also be accepted.

Powley's Response was filed outside of the time periods established by the Media Bureau in its March 1, 2005 Public Notice.<sup>1</sup> In that Public Notice, the Bureau stated that "parties objecting to or commenting on an NCA must file their pleadings with the Commission no later than March 15, 2005," with replies to

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<sup>1</sup> *Public Notice*, "DTV Channel Election Issues – Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings," DA 05-519 (Mar. 1, 2005).

such pleadings due by March 22, 2005.<sup>2</sup> The Public Notice made no provision for the filing or acceptance of any "responses" to such replies. Powley's Response, which was filed on March 28 and raises no new issues not addressed in her initial Objection to the election, should therefore be dismissed. If the Commission accepts Powley's Response, equity demands that Paxson be afforded an opportunity to respond, and this Reply should be accepted as well.

Respectfully Submitted,

PAXSON DES MOINES LICENSE, INC.

By: 

William L. Watson  
Secretary

Paxson Communications Corporation  
601 Clearwater Park Road  
West Palm Beach, FL 33401

Dated: April 5, 2005

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<sup>2</sup> Id.

Certificate of Service

I, GINTHA OGUST, certify that on this 5th day of April, 2005 I caused the foregoing Reply Comments to be served by overnight courier on the following:

Nazifa Sawez  
Media Bureau  
Federal Communications Commission  
Room 2-A726  
445 Twelfth Street, SW  
Washington, DC 20554

William T. Hayes  
Director of Engineering  
Iowa Public Broadcasting Board  
6450 Corporate Drive  
P.O. Box 6450  
Johnston, IA 50131-6450

Mark J. Park  
Brooks, Pierce, McLendon, Humphrey  
& Leonard, L.L.P.  
P.O. Box 1800  
Raleigh, NC 27602

Anne Goodwin Crump  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street  
11th Floor  
Arlington, VA 22209

(Counsel to Des Moines Hearst-  
Argyle Television, Inc.)

(Counsel to Powley)

W. Ray Rutngamlug  
Paul, Hastings, Janofsky &  
Walker, LLP  
875 15th Street, NW  
Washington, DC 20005

David D. Burns  
Latham & Watkins LLP  
555 11th Street, NW  
Washington, DC 20004

(Counsel to Pappas Telecasting of  
Iowa, L.L.C.)

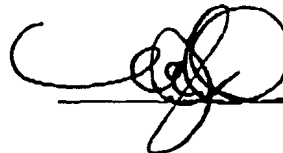
(Counsel to Capital Communications  
Company, Inc.)

Mr. James L. Boyer  
General Manager, WHO-TV  
1801 Grand Avenue  
Des Moines, IA 50309

Mr. Ted Stephens  
Vice President & General Manager,  
KDSM-TV  
4023 Fleur Drive  
Des Moines, IA 50321

Mr. Joe Denk  
General Manager, KFXA(TV)  
Box 3131  
Cedar Rapids, IA 52406-3131

Mr. Wayne Godsey  
General Manager, KCWE(TV)  
1049 Central  
Kansas City, MO 64105



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**REPLY TO RESPONSE**

Paxson Des Moines License, Inc. ("Paxson"), licensee of television station KFPX(TV), Newton, Iowa (the "Station"), hereby replies to the late-filed Response of Caroline K. Powley ("Powley") regarding the above-referenced channel election application.<sup>3</sup> Powley fails in her Response to raise any new objection to the Station's election, and instead simply restates her erroneous claim that Paxson has somehow circumvented the Commission's procedures and baselessly questions the existence of an negotiated channel arrangement ("NCA") involving the Station. The claims advanced by Powley in her Response are without merit and should be rejected.

Because Paxson was concerned about the Station's ability post-transition to replicate digital service, it entered into an NCA to elect Channel 29. The

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<sup>3</sup> As explained in Paxson's Motion to Dismiss Response, or in the Alternative, for Leave to Accept Reply to Response, Powley's Response, which was filed on March 28, should be dismissed as late-filed. If the Commission accepts Powley's Response, however, equity demands that Paxson be afforded an opportunity to respond, and this Reply should be accepted as well.

Commission informally indicated to broadcasters that stations could enter into such arrangements with other stations in the market to elect unallotted channels.<sup>4</sup>

Powley repeats allegations, first raised in her Objection, that Paxson has somehow attempted to circumvent the Commission's rulemaking process and failed to follow approved procedures in its election of Channel 29. This claim is without merit. Paxson has engaged in a course of action that was available to any licensee, including Powley herself, in the first round of channel elections. As Paxson explained in its Reply Comments, the Commission has approved of stations with no in-core allotment, such as Powley's KDMI-DT, entering into NCAs in the first round of channel elections,<sup>5</sup> and also has stated informally that unallotted channels such as Channel 29 could be elected subject to NCAs. The fact that Powley did not take advantage of this opportunity in no way suggests that Paxson has attempted to circumvent the Commission's established rules and procedures.

Powley also again attempts to raise unfounded questions regarding the existence of an NCA related to the Station's election. As Paxson already has explained in its Reply Comments in this proceeding, an NCA did exist. On

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<sup>4</sup> This is reflected in a memorandum circulated in the industry entitled "Informal Q&A on Round One Channel Election Arrangements And Other Issues Based on Meeting with Media Bureau and OET Staff on January 13, 2005." (*Informal Memorandum*).

<sup>5</sup> See *Public Notice*, "First Round DTV Channel Election Issues – List of In-Core Channels Elected by Out-of Core Stations Participating in Proposed Negotiated Channel Arrangements; List of Stations that Submitted Schedule B Reflecting Reduced Operating Facilities in Connection with Proposed Negotiated Channel Arrangements," DA 05-655, at Table I (March 11, 2005).

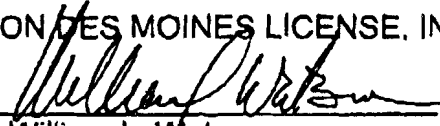
January 13, 2005, Paxson informed a number of stations in the Newton area of its desire to elect Channel 29 for the Station, and requested that these parties acknowledge their agreement to this election, or inform Paxson of any objections. In response to this request Paxson received a signed acknowledgment from New York Times Management Services, licensee of WHO-TV, Des Moines, Iowa, indicating that it had no objection to the Station's election. A single party, Second Generation of Iowa, LTD, expressed concern about interference from the Station's election. Paxson responded to Second Generation that no interference would be caused, and Second Generation has not filed any comments or objections in this proceeding. Prior to the Station's filing of its Form 382, no other party expressed any objection to the Station's election of Channel 29. Powley's claim that there is "no evidence" of a negotiated channel arrangement is clearly incorrect and should be rejected.

Paxson has in no way circumvented the Commission's channel election procedures in its election of Channel 29 pursuant to an NCA. No station has established that it would be legitimately harmed by the grant of the Station's election. Accordingly, Paxson urges the Commission to reject Powley's comments and respectfully requests that the Commission assign Channel 29 to the Station for post-transition operation.

Respectfully Submitted,

PAXSON DES MOINES LICENSE, INC.

By:

  
William L. Watson  
Secretary

Paxson Communications Corporation  
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Dated: April 5, 2005

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P.O. Box 6450  
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P.O. Box 1800  
Raleigh, NC 27602

Anne Goodwin Crump  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street  
11th Floor  
Arlington, VA 22209

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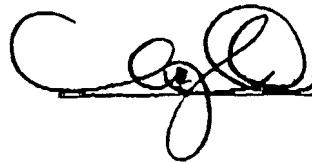
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Box 3131  
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1049 Central  
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